

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

3:09cr229

UNITED STATES OF AMERICA	)	
	)	
vs.	)	<u>ORDER</u>
	)	
MICHAEL GENE TERRELONGE (1)	)	
	)	
_____	)	

**THIS MATTER** is before the Court on the defendant's Motion for to Dismiss Indictment. (Doc. No. 59). A magistrate judge issued a Memorandum and Recommendation ("M&R"), recommending that the motion be denied. (Doc. No. 60). The time period for filing objections has passed, Fed. R. Crim. P. 59(b)(2); accordingly, this matter is ripe for the Court's review.

The defendant was charged with offenses relating to an armed bank robbery conspiracy (Doc. No. 15: Indictment) and convicted as charged after a jury trial (Doc. No. 57: Verdict). After the trial, the defendant filed the instant Motion to Dismiss alleging defects in the initiation of the prosecution and the indictment, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure. The magistrate judge determined that the defendant waived these issues when he failed to raise them prior to trial.

A district judge may refer to a magistrate judge any matter that may dispose of a charge or defense, such as a motion to dismiss an indictment, for recommendation. Fed. R. Crim. P. 53(b)(1). When a party objects to the recommendation, a district court must consider the objection de novo. Fed. R. Crim. P. 53(b)(3). However, the failure to object waives a party's

right to review. Fed. R. Crim. P. 53(b)(2). Here, the defendant did not object to the magistrate judge's recommendation. Even so, the Court has reviewed this matter for clear error and finds that it should accept the recommendation. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (calling for clear error review in the absence of timely objection).

**IT IS, THEREFORE, ORDERED** that the defendant's Motion to Dismiss (Doc. No. 59) is **DENIED**.

Signed: May 10, 2011

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

